

IN THE COURT OF APPEAL OF BOTSWANA
HELD AT GABORONE

CACGIB-104-12

HIGH COURT CASE NO. MAHLB-000836-10

COURT OF APPEAL CASE NO.

In the matter between:

Molefi S. Ramantele

and

Edith E Mmusi

Bakhani Moima

Jane Lekoko

Mercy. K. Ntshekisang



APPELLANT

1st RESPONDENT

2nd RESPONDENT

3rd RESPONDENT

4th RESPONDENT

NOTICE OF APPEAL TO THE COURT OF APPEAL
OF THE REPUBLIC OF BOTSWANA

BE PLEASED TO TAKE NOTICE THAT the Appellant being dissatisfied with the decision of the High Court delivered on the 12th day of October 2012 hereby gives notice and appeals against the said decision.

1. Grounds of Appeal:

1.1. The Honourable Court erred by finding that the Ngwaketse Customary Law rule of inheritance provides that only the last born male is qualified as an interstate heir to the exclusion of his female siblings, therefore infringing on the equality provisions of the Constitution of Botswana. The Ngwaketse Customary law allows for all siblings of the deceased to inherit interstate. The only distinction made by customary law under Ngwaketse is that there are certain properties within the deceased's estate which can only be inherited by a specific individual taking into consideration the gender of that individual and their position in relation to birth.

1.2. The Honourable Court erred by finding that the Ngwaketse Customary rule of inheritance has the same effect as the common principle of male primogeniture, in that both exclude women from inheriting. Under the common law principle of male primogeniture only males are permitted to inherit interstate

to the exclusion of their female sibling which is not the same under the Ngwaketse customary rule.

1.3. The Honourable Court in determining whether the Ngwaketse Customary Rule of inheritance is *ultra vires* section 3 of the Constitution of Botswana misdirected itself by placing too much emphasis on foreign judgements which dealt mainly with the principle of male primogeniture, specifically the reliance on the South African Case of *Bhe v Magistrate, Khayelitsha*. These cases are in our view distinguishable from the current case and should have not been relied on by the Honourable Court.

1.4. The learned Judge erred in failing to distinguish clearly between the common law principle of male primogeniture and the Ngwaketse Customary law of inheritance.

Supplementary Grounds of Appeal shall be filed upon receipt of the case record.

2. Relief Sought from the Honourable Court:

2.1. An order allowing the Appellant's appeal and setting aside the judgment of the Court aquo and its orders.

DATED AT GABORONE ON THIS 9th NOVEMBER 2012.

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TO: THE REGISTRAR
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AND TO: RANTAO KEWAGAMANG ATTORNEYS
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AND TO: THE ATTORNEY GENERAL OF BOTSWANA
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